

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1814.

No. 715.

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RAMAPO WATER COMPANY, APPELLANT,

vs.

CITY OF NEW YORK AND CHARLES STRAUSS, CHARLES N. CHADWICK, AND JOHN F. GALVIN, INDIVIDUALLY AND AS MEMBERS OF THE BOARD OF WATER SUPPLY OF THE CITY OF NEW YORK.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES,  
SOUTHERN DISTRICT OF NEW YORK.

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FILED DECEMBER 7, 1814.

(24,459)

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INDEX.

	Original.	Print
Stipulation as to record on appeal.....	1	1
Bill of complaint.....	4	2
Exhibit A—Certificate of incorporation of Ramapo Water Company .....	30	15
B—Receipt for organization tax.....	33	17
C—Chapter of the New York Laws of 1895.....	34	18
Answer .....	38	20
Motion to dismiss.....	64	35
Notice of motion.....	65	35
Opinion, Ward, J.....	66	36
Decree .....	72	38
Petition for an appeal.....	73	39
Assignment of errors.....	75	40
Certificate of question of jurisdiction.....	80	42
Citation and service.....	82	42
Stipulation as to record.....	84	43
Clerk's certificate .....	85	44



1 *Stipulation as to Record.*

District Court of the United States, Southern District of New York.

RAMAPO WATER COMPANY, Plaintiff,  
against

CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK,  
and John F. Galvin, Individually and as Members of the Board  
of Water Supply of said City of New York, Defendants.

It is hereby conceded that the subpoena to answer the bill of complaint herein was duly issued and served within the Southern District of New York upon each and all the defendants above named and that each and all said defendants duly appeared generally and answered said bill; and

It is hereby Stipulated that upon the appeal taken by the plaintiff from the decree dismissing the bill of complaint herein for want of jurisdiction the following portions of the record herein shall constitute the transcript of record to be transmitted to the Supreme Court of the United States, viz:

1. Bill of complaint and exhibits thereto annexed.
2. Answer of defendants.
3. Defendants' motion to dismiss for want of jurisdiction and the notice thereof.
4. Opinion of Judge Ward dated June 16th, 1914.
5. Final decree dated June 26th, 1914.
6. Petition for and allowance of appeal.
7. Assignment of errors.
- 2       8. Certificate on question of jurisdiction.
9. Citation on appeal with admission of service thereto annexed.

Dated New York, June 29th, 1914.

CARROLL G. WALTER,  
*Solicitor for Plaintiff.*

FRANK L. POLK,  
*Solicitor for Defendants,*

Per W.

Filed July 1, 1914.

3 [Endorsed:] Dist. Ct. of the United States, Southern Dist.  
of New York. Ramapo Water Company, Plaintiff, against  
City of New York, and Charles Strauss, Charles N. Chadwick and  
John F. Galvin, individually and as members of the Board of Water  
Supply of said City of New York, Defendants. Stipulation as to  
record on appeal. Carroll G. Walter, Solicitor for Plaintiff, 115  
Broadway, Borough of Manhattan, New York City.

4 District Court of the United States, Southern District of New York.

RAMAPO WATER COMPANY, Plaintiff,  
against

CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK,  
and John F. Galvin, Individually and as Members of the Board  
of Water Supply of said City of New York, Defendants.

*Bill of Complaint.*

Carroll G. Walter, Solicitor for Plaintiff, 115 Broadway, Borough  
of Manhattan, City of New York.

Filed March 16, 1914.

5 District Court of the United States, Southern District of New  
York.

RAMAPO WATER COMPANY, Plaintiff,  
against

CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK,  
and John F. Galvin, Individually and as Members of the Board  
of Water Supply of said City of New York, Defendants.

*Bill of Complaint*

To the Honorable the Judges of the District Court of the United  
States for the Southern District of New York, in Equity Sitting:

The above named plaintiff, Ramapo Water Company, a corpora-  
tion duly organized and existing under and by virtue of the laws of  
the State of New York and a citizen and resident of said State of  
New York, brings this its bill of complaint in equity against the  
above named defendant, City of New York, a municipal corporation  
duly organized and existing under the laws of said State of New  
York and a citizen of said State, having its principal office in and  
being an inhabitant of the Southern District of New York,  
6 and Charles Strauss, Charles N. Chadwick, and John F. Gal-  
vin, each and all citizens of the State of New York, and in-  
habitants of said Southern District of New York, constituting the  
Board of Water Supply of said City of New York; and said plain-  
tiff thereupon shows unto the Court and, upon information and be-  
lief, alleges:

First. The names, citizenship and residences of the parties to this  
bill are as set forth in the introduction to this bill; and this suit  
arises under the Constitution and laws of the United States, and the  
matter in controversy herein exceeds, exclusive of interest and costs,  
the sum or value of three thousand dollars.

Second. On or about the fourteenth day of September, 1887, the  
above named plaintiff, Ramapo Water Company, was duly incor-

porated under and pursuant to the laws of the State of New York for the objects and purposes of accumulating, storing, conducting, selling, furnishing and supplying water for mining, domestic, manufacturing, municipal, and agricultural purposes to cities, to other corporations, and to persons that might lawfully contract therefor. A copy of the certificate of incorporation of said plaintiff is hereto annexed marked Exhibit A and hereby made part of this bill of complaint.

Third. At the time of its incorporation the plaintiff paid to the State of New York, for the privilege of said incorporation, the sum of \$3,125, as provided by the laws of said State, and said sum was received and accepted by said State of New York, as more fully appears by the receipt of said State of New York, a copy of which is hereto annexed marked Exhibit B and hereby made part of this bill of complaint.

7 Fourth. The capital stock of the plaintiff was and is \$2,500,000, divided into 25,000 shares of \$100 each, and all said stock was duly issued within one year after the incorporation of the plaintiff, and ever since has been and is now outstanding and owned by a large number of persons.

Fifth. At the time the plaintiff was incorporated as above set forth, there were in force as laws of the State of New York, Chapter 40 of the New York Laws of 1848, Chapter 85 of the New York Laws of 1880, and Chapter 472 of the Laws of 1881, and the plaintiff was incorporated under and by virtue of said laws and other acts of the Legislature of the State of New York amendatory thereof and supplemental thereto. Reference is here made to all said laws and the same are hereby asked to be read in connection with and as part of this bill of complaint as if herein set forth at length. By virtue of the plaintiff's incorporation under said laws, a contract was duly made and entered into between the State of New York and the plaintiff, wherein and whereby said State duly granted to the plaintiff the rights, powers, privileges, and franchises set forth in said laws and in the plaintiff's certificate of incorporation, and the plaintiff thereby became and was possessed of and vested with all said rights, powers, privileges, and franchises; and in particular, among other things, there was thus granted to the plaintiff by the State of New York and the plaintiff thus became possessed of and vested with the right to acquire, take, hold, lease, and convey lands, waters, and water power suitable for its corporate purposes; the right to exercise

8 the State's power of eminent domain; the right to acquire title to land and water for its corporate purposes in the manner specified and required by an act of the Legislature of New York known as the General Railroad Act and constituting Chapter 140 of the Laws of 1850, passed April 2, 1850, and entitled, "An Act to authorize the formation of railroad corporations and to regulate the same;" the right to lay pipes for the purpose of conducting water for the purpose of its business under any of the navigable waters of the State of New York; the right to contract with municipalities, including the City of New York, and private corporations, to furnish water for any of the purposes specified in said certificate of

incorporation; and other rights, powers, privileges, and franchises specified in the laws of the State of New York in force at the time of the plaintiff's incorporation.

Sixth. The rights, powers, privileges, and franchises so accruing to the plaintiff as aforesaid were duly accepted by the plaintiff and were of great value to it, and upon the faith of said rights, powers, privileges, and franchises, the plaintiff paid said sum of \$3,125 to the State of New York, and performed a vast amount of work, and expended a vast sum of money in and about the prosecution and conduct of its corporate purposes, and incurred and paid large obligations, and numerous persons subscribed for and purchased and paid for its capital stock.

Seventh. Immediately after its incorporation as aforesaid, the plaintiff organized and commenced the transaction of its business and with great diligence undertook the discharge of its corporate duties. Among other things, the plaintiff, at large expense and upon the faith of said rights, powers, privileges, and franchises, so granted to it by said State of New York, investigated and located the available sources from which it could obtain water; devised plans for accumulating, storing, selling, furnishing, and supplying such water for the purposes and to the persons specified in its certificate of incorporation; negotiated for the sale thereof; and partially executed and carried out said plans and took steps to acquire, both by purchase and by the exercise of its power of eminent domain, the land and water necessary for the attainment of its corporate purposes. In particular, the plaintiff between the date of its incorporation and June 7, 1890, made extensive and expensive surveys of lands and waters, acquired options for the purchase of large quantities of real estate, and also filed in the Clerk's office of various counties of the State of New York, about twenty-five maps of the lands, streams, lakes, and ponds, which the plaintiff intended to acquire, use, and occupy in carrying out its plans aforesaid for the attainment, execution, and pursuit of its corporate objects and purposes.

Eighth. During the plaintiff's said pursuit and execution of its corporate objects, purposes, functions, and duties, and while the plaintiff's plans aforesaid were with great diligence being perfected and carried out, and while the same were in process of completion, viz., on June 7, 1890, the Governor of the State of New York approved Chapters 563, 564 and 567 of the Laws of 1890, enacted by the Legislature of said State, whereby said Chapter 40 of the Laws of 1848, Chapter 85 of the Laws of 1880, and Chapter 472 of the Laws of 1881, and various other statutes that were in force at the time of the incorporation of the plaintiff and from which the plaintiff derived its valuable rights, powers, privileges, and franchises above mentioned, were repealed. Said repealing acts contained saving clauses whereby it was enacted as follows:

"The repeal of a law or any part of it specified in the annexed schedule shall not affect nor impair any act done or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to May 1, 1891, under or by virtue of any law so repealed; but the same may be asserted, enforced, prosecuted or in-

flicted as fully and to the same extent as if such law had not been repealed; and all actions and proceedings, civil or criminal commenced under or by virtue of the law so repealed and pending on April 30, 1891, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing, unless it shall be otherwise specially provided by law."

Ninth. Said contract between the State of New York and the plaintiff whereby said State granted to said plaintiff the rights, powers, privileges, and franchises hereinabove set forth, and said rights, powers, privileges, and franchises, constituted and were and are property of the plaintiff of which it could not be legally deprived; and to such extent as the above mentioned repeal of said laws was intended to or can be construed as limiting, impairing or destroying the rights, powers, privileges, and franchises of the plaintiff, said repealing acts impair the obligations of said contract between the plaintiff and the State of New York and deprive the plaintiff of its property without due process of law, and are therefore in contravention of  
11 Section 10 of Article 1 of the Constitution of the United States and the Fourteenth Amendment of said Constitution, and are null and void as to the plaintiff.

Tenth. By reason and as a result of the enactment of said Chapters 563, 564 and 567 of the Laws of 1890, whereby said Legislature of New York repealed the various laws under which the plaintiff had been incorporated, various questions, doubts, and uncertainties arose in the minds of many persons with respect to the exact legal status of the plaintiff and the nature and extent of the rights, powers, privileges, and franchises possessed by it; and in consequence of said questions, doubts and uncertainties, the plaintiff was greatly hindered, delayed, prejudiced, and impeded in the prosecution, development, and execution of its plans, and in the transaction of its business and in the discharge of its corporate duties and functions. The plaintiff was and continued to be so hindered, delayed, prejudiced, and impeded until June 11, 1895, when Chapter 985 of the Laws of 1895, entitled "An Act to limit and define the powers of the Ramapo Water Company" became a law of the State of New York by enactment by the Legislature with the approval of the Governor of said State. A copy of said Chapter 985 of the Laws of 1895 is hereto annexed marked Exhibit C and hereby asked to be read in connection with and as a part of this bill as if herein set forth at length.

Eleventh. The plaintiff duly accepted said Chapter 985 of the Laws of 1895 immediately after it became a law, and thereby and thereupon a contract was duly made and confirmed between the State of New York and the plaintiff wherein and whereby said State duly granted and confirmed to the plaintiff the rights, powers, privileges, and franchises set forth in said statute, which contract and  
12 which rights, powers, privileges, and franchises, constituted and were and are property of the plaintiff of which it could not be legally deprived and the obligations of which could not be legally impaired.

Twelfth. Upon the faith of said statute, Chapter 985 of the Laws of 1895, and in reliance upon its provisions, and in pursuance of the

rights, powers, privileges, and franchises so granted and secured to the plaintiff, and in execution and discharge of the plaintiff's corporate functions, duties, objects, purposes, and business, the plaintiff, at large expense and with great diligence, continued, after the enactment of said statute, to investigate and locate the available sources of water supply in the State of New York; to make surveys of the watersheds, and of the lands, streams, lakes, and ponds, necessary and desirable to be acquired and occupied for reservoirs, aqueducts, pipe lines, and other appurtenances of a system of water supply; to make plans for such reservoirs, aqueducts, pipe lines and other appurtenances; and generally to do all the things necessary and desirable for accumulating, storing, conducting, selling, furnishing, and supplying water for the purposes and to the persons and corporations specified in its certificate of incorporation and in the statutes above mentioned.

Thirteenth. At various times during the years 1895, 1896, 1897, 1898 and 1899, between June 22, 1895, and June 28, 1899, the plaintiff, pursuant to and in reliance upon the statutes aforesaid and in execution and discharge of its corporate functions and duties and for the purpose of carrying on its corporate business, duly made maps of the route adopted and land and waters to be taken by it for its corporate purposes and business, which maps were duly certi-

13       fied as required by the statute, and duly filed said maps in the offices of the clerks of the respective counties through which the route runs and in which the said lands and waters are situate; and the plaintiff thereby appropriated said lands and waters to and for its corporate business and purposes.

Fourteenth. The maps so filed by the plaintiff as herein set forth were upwards of one hundred in number and covered approximately one thousand square miles of land and water in Westchester, Putnam, Orange, Dutchess, Greene, Ulster, Delaware, Schoharie, and other counties of the State of New York. Said maps covered substantially the whole of the drainage areas known as the watersheds of the Esopus, Catskill, Schoharie, and Rondout Creeks in the State of New York, and the reservoir sites, aqueduct and pipe line routes, and other lands necessary to accumulate and store the waters from said watersheds and creeks and conduct the same to the City of New York and other municipalities, persons and corporations. The plan and design of the plaintiff as set forth on said maps was to accumulate and store the waters of said watersheds and of said Rondout, Schoharie, Catskill and Esopus Creeks at various points in the State of New York by means of storage reservoirs, and conduct said waters by means of aqueducts and pipe lines to the city limits of the City of New York and there deliver said water to said City; and the maps so filed by the plaintiff covered and designated all the routes, lands, and waters necessary to be acquired, occupied and used to carry out said plan and design and make the same effective.

Fifteenth. In addition to making and filing the maps  
14       aforesaid, the plaintiff, during the years aforesaid, obtained a large number of options and contracts for the purchase of upwards of seven thousand acres of land at the price of over two

hundred and forty thousand dollars, which land was to be acquired and used by the plaintiff in carrying out its said plans and in pursuit of its corporate purposes.

Sixteenth. The locating and surveying of the watersheds, reservoir sites, aqueduct and pipe line routes above mentioned, the making of the maps and plans above referred to, the acquisition of the contracts and options aforesaid, and the other acts performed by the plaintiff in and about the carrying on of its business and the exercise of its corporate purposes, necessarily involved the employment of skilled engineers, surveyors, draftsmen, and other employees, and the expenditure of large sums of money, and necessarily consumed a large amount of time and labor. By reason and in virtue and as a result of its employment of such persons and its expenditure of such time, labor and money as aforesaid, the plaintiff acquired a vast amount of data and information which was of great value: and a large part of such valuable data and information so obtained by and belonging to the plaintiff has been and is being taken, appropriated and used by the defendants herein in connection with and as incidental to the other acts and doings of the defendants hereinafter set forth.

Seventeenth. By its incorporation and organization aforesaid and by making and filing the maps hereinabove referred to, the plaintiff acquired and became possessed of a vested right and franchise to construct and maintain, upon the lands and waters covered by and designated on said maps, reservoirs, dams, aqueducts, and other

15 appurtenances of a system of water supply; to accumulate, store, conduct, sell, furnish and supply, for the purposes and

to the persons and corporations specified in its certificate of incorporation, the waters contained in and to be derived from the watersheds, lands, streams, lakes, and ponds covered by and designated on said maps; and to otherwise use the lands, streams, lakes, and ponds so covered by and designated on said maps for the accomplishment of the plaintiff's corporate objects and purposes and the prosecution of its business; which said right and franchise of the plaintiff was and is exclusive as to all other persons and corporations and legally and equitably free from the interference of any person or corporation; and from and after the time of the filing of said maps, the lands, streams, lakes, and ponds covered by and designated on said maps were and ever since have been and now are legally and equitably subject to the plaintiff's said franchise. Said right and franchise of the plaintiff was granted to it by the State of New York under and by virtue of the plaintiff's contract with said State, and said right and franchise was and is a contract right and a right of property, in the possession and use and enjoyment of which the plaintiff was and is entitled to and claims the protection of the Constitution of the United States and the amendments thereof.

Eighteenth. Prior to the time the plaintiff filed its maps as above set forth, to wit, in 1887, 1888 and at subsequent times, the Courts of the State of New York announced and declared the law of said State to be that the effect of the filing of maps under the provisions of said General Railroad Act of the State of New York was to give

to the corporation filing such maps a vested and exclusive right or franchise to the exclusive use and occupation of the lands covered by such maps for its own corporate purposes free from the interference of any other person or corporation; and further generally announced and declared the law of said State to be that the filing of such maps had the effect hereinabove in Paragraph Seventeenth of this bill of complaint alleged. The law as so announced by said Courts was the law of the State of New York and entered into and became a part of the contract between the plaintiff and said State, and the plaintiff was entitled to and did rely upon the same; and it was and is beyond the power of the State of New York, whether acting through its executive, legislative, or judicial agencies, to change said law to the detriment of the plaintiff; and each and every such attempted or purported change was and is an impairment of the obligation of said contract between the plaintiff and said State and is null and void as to the plaintiff because in contravention of the Constitution of the United States and the amendments thereto.

Nineteenth. In March, 1898, the plaintiff, in prosecution of its corporate business and in exercise of its corporate functions and for the purpose of carrying out the objects for which it was incorporated, made an offer to the defendant, City of New York, to supply said City with pure and wholesome water from the watersheds, lakes, streams, and ponds covered by and designated on the maps filed by the plaintiff as above set forth, such water to be delivered to said city by direct gravity system at a pressure due to a head of at least three hundred feet above mean tide level. Said offer was taken under consideration by the proper authorities and officials of said City and was examined into and considered by them. The negotiations with respect to said offer and the examination and consideration thereof were continued until November, 1899, when the authorities of said City, by resolution, deferred action on said offer for a period of three months.

Twentieth. At the time the plaintiff made said offer to supply said City of New York with water, said City was in actual need of a new and additional supply of pure and wholesome water and such need was daily increasing and becoming more urgent, and said City was without the resources necessary to construct an adequate system with which to supply said need, and was without the legal power and authority necessary to enable it to condemn the lands and waters necessary for such purpose, and by reason of limitations contained in the Constitution of the State of New York said City was unable to borrow money for that purpose.

Twenty-first. During the latter part of the year 1899, while the plaintiff's said offer to supply water to the City of New York was under consideration by the authorities of said City, the question of municipal ownership of systems of water supply and other public utilities began to be agitated in said City; and the public authorities of said City, without rejecting said offer so made by the plaintiff as aforesaid and for the purpose as announced by them of enabling them to determine whether they should accept said offer, instituted and carried on various elaborate and extensive investigations into

the available sources of water supply for said City, and into the ways and means by which said City might best obtain the water needed by it. Said investigations continued during the years 1900 to 1905, during all which time the authorities of said City deferred action upon the offer so made by the plaintiff as aforesaid and said offer remained pending before them unacted upon.

18 Twenty-second. During the progress of said investigations so instituted and carried on by and under the direction of the public authorities of said City of New York as aforesaid, said public authorities or some of them applied, from time to time, to the Legislature of the State of New York for legislation that would enable said City to build its own water supply system; and the authorities of said City, during the period aforesaid, also procured the adoption of an amendment to the Constitution of the State of New York whereby said City was enabled to incur the indebtedness necessary to be incurred in order to provide for such water supply. During the same period of time, viz., on or about March 19th, 1901, said Chapter 985 of the Laws of 1895 was repealed by the Legislature of the State of New York by an act known and designated as Chapter 122 of the Laws of 1901. All the legislation in this paragraph mentioned was and is unconstitutional and void as to the plaintiff, because in violation and contravention of Section 10 of Article I of the Constitution of the United States and of the Fourteenth Amendment of said Constitution in that it impairs the obligations of the plaintiff's contract with the State of New York and deprives the plaintiff of its property without due process of law.

Twenty-third. As a result of the efforts of the authorities of said City, the Legislature of the State of New York, in 1905, enacted a statute entitled "An Act to provide for an additional supply of pure and wholesome water for the City of New York; and for the acquisition of lands or interest therein, and for the construction of the necessary reservoirs, dams, aqueducts, filters, and other appurtenances

19 for that purpose; and for the appointment of a Commission with the powers and duties necessary and proper to attain these objects," which statute is known and designated as Chapter 724 of the Laws of 1905 and became a law of said State of New York on June 3, 1905.

Said statute provides that the Mayor of said City of New York shall appoint three persons who shall be Commissioners for the purposes specified therein, and that the persons so appointed shall constitute a Board or Commission to be called the Board of Water Supply of the City of New York.

In and by said statute it was made the duty of said Board of Water Supply to proceed to ascertain what sources were most available, desirable and best for an additional supply of pure and wholesome water for said City; and said Board was directed, after investigation, to make a report to the Board of Estimate and Apportionment of said City with recommendations as to what action should be taken, so that said two Boards might determine from what source or sources and in what manner said City might best secure an additional supply of pure and wholesome water; and it was in said statute further pro-

vided that said City should have no power to acquire, take, or condemn lands under said statute unless maps and plans covering the work be submitted to and approved by the State Water Supply Commission.

Reference is here made to said Chapter 724 of the Laws of 1905 and the amendments thereto, and the same are asked to be read in connection with and as part of this bill of complaint as if herein set forth at length.

Twenty-fourth. On said June 3, 1905, there also became a law of said State of New York an act enacted by the Legislature of said State and approved by the Governor thereof, entitled "An Act to establish a state water commission, to define its powers and 20 duties, and making an appropriation therefor," which act is known and designated as Chapter 723 of the Laws of 1905. Said act provided for the appointment of five citizens of the State who should constitute a Commission to be known as the State Water Supply Commission. In and by said act it was further provided:

"No municipal corporation or other civil division of the State, and no Board, Commission or other body of or for any such municipal corporation or other civil division of the State shall, after this act takes effect, have any power to acquire, take or condemn lands for any new or additional sources of water supply, until it has first submitted the maps and profiles therefor to said Commission, as herein-after provided, and until said Commission shall have approved the same."

And said State Water Supply Commission was given power and authority to approve, modify, or reject any application made to it by a municipal corporation or other division of the State for the approval of maps and profiles for a new or additional source of water supply.

Twenty-fifth. On or about June 9, 1905, the then Mayor of the City of New York, in exercise of the authority conferred upon him by said Chapter 724 of the Laws of 1905, appointed three persons to constitute the Board of Water Supply of said City. Said persons entered upon the discharge of their duties under said statute and they and their successors in office have since continued to act as said Board of Water Supply and are now acting as such. The present members of said Board are the defendants, Charles Strauss, Charles 21 N. Chadwick and John F. Galvin, and said defendants now constitute the Board of Water Supply of the City of New York and are now acting as such Board under said Chapter 724 of the Laws of 1905 and the amendments thereof.

Twenty-sixth. On or about October 5, 1905, said Board of Water Supply, acting under the provisions of said Chapter 724 of the Laws of 1905, submitted to the Board of Estimate and Apportionment of said City a report as provided by Section Two of said Chapter 724; and on or about October 27, 1905, said Board of Estimate and Apportionment approved and adopted said report as the final map and plan covering the entire work contemplated by said Chapter 724. Said Board of Water Supply thereafter prepared and submitted certain detail maps in purported and attempted compliance

with Section Five of said Chapter 724, and said detail maps were thereafter approved by said Board of Estimate and Apportionment and transmitted and filed in purported and attempted compliance with Sections Five and Six of said statute. Thereafter, during the years 1907 to 1913, inclusive, said City and said Board of Water Supply, through the Corporation Counsel, made numerous applications for the appointment of Commissioners of Appraisal and instituted numerous proceedings in purported and attempted compliance with Sections Seven and Eight of said statute and numerous Court orders appointing Commissioners of Appraisal were obtained by said City and said Board of Water Supply in purported and attempted compliance with Section Nine of said statute and under color of an authority claimed to be contained in and conferred by said section; and numerous oaths of such Commissioners of Appraisal were taken,

subscribed, and filed in purported and attempted compliance  
22 with Section Ten of said statute and under color of an authority claimed to be contained in and conferred by said section. Said applications were made and said proceedings were instituted, and said Court orders were obtained, and said oaths were taken, subscribed, and filed, under color, also, of an authority claimed to be contained in and conferred by certain decisions of said State Water Supply Commission of the State of New York hereinafter set forth.

Twenty-seventh. On or about November 3, 1905, said City of New York made an application to said State Water Supply Commission for the approval of the maps and profiles so previously approved and adopted by said Board of Estimate and Apportionment on October 27, 1905, as hereinabove alleged; and thereafter and on or about the fourteenth day of May, 1906, said State Water Supply Commission made and filed a decision in writing upon said application wherein and whereby said State Water Supply Commission approved said application and said maps and plans with certain modifications thereof particularly set forth and described in said decision. On or about October 15, 1907, said State Water Supply Commission made and filed another decision in writing upon another application made to it by said City, and therein and thereby said State Water Supply Commission approved a modification in the line of the aqueduct mentioned and specified in said first named application of said City to said Commission.

Twenty-eighth. The said maps and plans of the City of New York, so approved by said State Water Supply Commission, provide  
23 for the acquisition of large quantities of land and water in and around the drainage areas known as the watersheds of Esopus, Rondout, Catskill, and Schoharie Creeks in the State of New York, the erection of dams and reservoirs for accumulating and storing said waters, the construction of an aqueduct for conducting said waters to the City of New York, and the acquisition of the lands necessary to be used and occupied for those purposes. The lands and waters so proposed to be utilized by said City of New York, as in said plans shown and provided, are, in large part and to a great extent, the same lands and waters that are covered by and desig-

nated on the maps filed by the plaintiff as hereinabove set forth; and said plans of said City for accumulating, storing, and conducting said waters are similar to and practically identical with the plans so as aforesaid previously made and designed by the plaintiff for that purpose; and the execution of said plans of said City of New York will and does necessarily involve the appropriation, use, and occupation by said City of the lands, streams, lakes, and ponds so as aforesaid previously appropriated, used, and occupied by the plaintiff.

Twenty-ninth. Acting under color of an authority claimed by them to be contained in and conferred by said Chapters 723 and 724 of the New York Laws of 1905 and the above mentioned decisions of said State Water Supply Commission, but in fact in excess and abuse of the powers and authority conferred by said statutes and said decisions, and in disregard of the protests and objections of the plaintiff, and in violation of the plaintiff's rights, the defendants above named and each and all of them have entered and are now trespassing upon the lands, streams, lakes and ponds covered

24 by and designated on the maps filed by the plaintiff as hereinabove alleged, and have commenced and are now continuing the construction and erection of reservoirs, dams, aqueducts, filters, and appurtenances on a large portion thereof; and said defendants are claiming that the City of New York has acquired the ownership of a large portion of said lands, streams, lakes and ponds, and the right to use the same, and are threatening and are announcing and have announced their intention of proceeding with the erection and construction of such dams, reservoirs, aqueducts, and appurtenances, until the same shall be completed, and of then accumulating the waters from the streams and watersheds covered by and designated on the maps so as aforesaid filed by the plaintiff and storing said waters in said reservoirs and of conducting said waters to the City of New York, and of there using said waters for municipal, domestic, and other purposes; all in direct violation and disregard of the plaintiff's rights and franchises and to the great damage and injury of the plaintiff.

Thirtieth. If the defendants herein complete the construction of the reservoirs, dams, aqueducts, and appurtenances now being and proposed to be erected by them as aforesaid, and accumulate and store said waters and conduct said waters to the City of New York and there use said waters for municipal, domestic and other purposes, in accordance with the maps and plans so as aforesaid approved by the State Water Supply Commission, it will be impossible for the plaintiff to take advantage of or use said lands, streams, lakes and ponds; and the rights, powers, privileges, and franchises so granted to and vested in the plaintiff as hereinabove alleged will be thereby impaired, injured, damaged, and practically destroyed and rendered useless and valueless, to the great and irreparable injury of the plaintiff and its stockholders; and unless said defendants be enjoined and restrained by this Court they will complete the construction of said reservoirs, dams, aqueducts, and

appurtenances, and will so accumulate, store, conduct, and use said waters, and will thereby cause and inflict upon the plaintiff and its stockholders an irreparable injury for which there is no adequate remedy at law.

Thirty-first. None of the defendants herein has made any effort or taken any step or proceeding to acquire the rights, powers, privileges and franchises of the plaintiff or any of them, although the plaintiff's ownership and possession of said rights, powers, privileges and franchises were and are well known to said defendants and each of them; nor has any of said defendants paid or offered to pay to the plaintiff any compensation whatsoever for its said rights, powers, privileges and franchises, or any damages for the impairment or destruction thereof or injury thereto. Said defendants, on the contrary, assert and claim that they are authorized and empowered by said Chapters 723 and 724 of the Laws of 1905 and said decisions of the State Water Supply Commission to do and perform all the acts and things done and performed by them as herein alleged, without acquiring any of said rights, powers, privileges and franchises of the plaintiff and without paying to the plaintiff any compensation or damage whatsoever.

Thirty-second. By reason of the premises, the obligations of the plaintiff's contracts with the State of New York herein set forth are being impaired by laws of said State and the acts and doings of the defendants under color of said laws, all in contravention 26 and in violation of Section 10 of Article I of the Constitution of the United States; and in like manner and by like means the plaintiff's property is being taken and the plaintiff is being deprived of its property without due process of law and without compensation, all in contravention and in violation of the Fourteenth Amendment to the Constitution of the United States; and the plaintiff invokes the jurisdiction of this Court upon those grounds for the purpose of enforcing and protecting its rights under said Constitution and the Amendments thereof.

Forasmuch, therefore, as the plaintiff is without remedy save in this Court, sitting in equity, it therefore prays:

1. That the City of New York, and Charles Strauss, Charles N. Chadwick and John F. Galvin, individually and as members of the Board of Water Supply of said city, be made parties defendant to this bill of complaint and required to answer the same, but not under oath, answers under oath being hereby expressly waived.

2. That the plaintiff's contract with the State of New York hereinabove alleged and the rights, powers, privileges and franchises of the plaintiff hereinabove set forth, be established and adjudged by decrees of this Court.

3. That the various acts, statutes, laws, and proceedings hereinabove complained of as violating the plaintiff's rights under the Constitution of the United States and the Amendments thereof, be adjudged and declared unconstitutional and void as to the plaintiff.

4. That the defendants herein and each and every of them and all their officers, attorneys, agents, servants, workmen and

27 contractors, and all persons, firms, corporations, and officers whatsoever, be enjoined and restrained from in any way trespassing upon or interfering with or impairing or injuring the rights, powers, privileges and franchises of the plaintiff and, in particular, that said defendants and all such other persons be enjoined and restrained; (a) from continuing the erection or construction of the dams, reservoirs, aqueducts and other structures and devices now being and proposed to be constructed and erected by them as herein set forth; (b) from accumulating, storing, taking or using any of the waters of Esopus, Schoharie, Rondout and Catskill Creeks, or any or either of them, or any of the waters contained in or to be derived from the watersheds of said creeks or any or either of them; (c) from conducting any of said waters to the City of New York for the purpose of there using said waters for municipal, domestic or other purposes; (d) from in any way or by any means trespassing upon any of the lands, streams, lakes or ponds embraced within the watersheds of the Esopus, Schoharie, Rondout and Catskill Creeks or doing any other act within said watersheds whereby the rights, powers, privileges and franchises of the plaintiff will be impaired, injured or interfered with; and (e) from claiming or in any manner asserting the ownership or right of exclusive possession or use of said lands, streams, lakes and ponds, or any of them.

5. That a preliminary injunction in accordance with the last preceding prayer be forthwith granted pending the hearing and determination of this suit, to continue in force during the pendency of this suit and until the granting of a permanent injunction in accordance with said last preceding prayer.

28 6. That the defendants herein and each and every of them be required and compelled, by mandatory injunction or other suitable process of the Court, either to remove such portions of the dams, reservoirs, aqueducts, and other structures and devices as have been already erected by them in interference with the rights, powers, privileges, and franchises of the plaintiff, or to convey and grant the same to the plaintiff for use by it in connection with its said rights and franchises.

7. That a Receiver be forthwith appointed to take possession of so much of the reservoirs, dams, aqueducts, and other structures and devices as have been already erected and constructed by the defendants as herein set forth, and to hold and preserve the same and all matters and things incident thereto and connected therewith, in order that the same may be applied and disposed of in accordance with the decree of this Court to be entered herein.

8. That as incidental to such relief the defendants be decreed to account for and pay over to the plaintiff the damage occasioned to the plaintiff by the defendants' violations of the plaintiff's rights, powers, privileges, franchises; and that such damages be assessed by this Court upon the entry of the decree herein.

9. That the plaintiff have all such other, further, different, and general relief, by way of damages or in the alternative or otherwise as may be proper and just in the premises.

10. That the plaintiff have writs of injunction and a Receiver in conformity with the terms of this bill; that all proper orders and decrees be entered herein, all proper inquiries made, accounts taken, and proceedings had, in conformity with law and the practice of the  
 29 Court and that the plaintiff have a writ of subpoena duly directed to the defendants herein and each of and every of them commanding them and each and every of them to appear and answer this bill of complaint and abide and perform all such orders and decrees as to the Court shall seem proper and as may be required by the principles of equity and the plaintiff will ever pray.

CARROLL G. WALTER,  
*Solicitor for Plaintiff, 115 Broadway,  
 Borough of Manhattan, City of New York.*

UNITED STATES OF AMERICA,  
*Southern District of New York, County of New York, ss:*

Malcolm B. Dutcher, being duly sworn, deposes and says:  
 That he is the Vice-President of the Ramapo Water Company, the plaintiff named in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters he believes it to be true.

The reason why this verification is made by deponent and not by the plaintiff is that the plaintiff is a corporation.

MALCOLM B. DUTCHER.

Sworn to before me this 16th day of March, 1914.

SAMUEL J. WAGSTAFF,  
*Notary Public, Suffolk County.*

Certificate filed in N. Y. County, No. 104.

*Certificate of Incorporation of Ramapo Water Company.*

STATE OF NEW YORK,  
*City of Brooklyn, County of Kings, ss:*

We, George A. Evans, Josiah G. Chase, William J. McAlpine do, by these presents, pursuant to and in conformity with the Act of the Legislature of the State of New York, passed on the seventeenth day of February, one thousand eight hundred and forty-eight, entitled "An Act to authorize the formation of Corporations for Manufacturing, Mining, Mechanical or Chemical purposes," and the several acts of the said Legislature amendatory thereof, Associate ourselves together, and form a Company under the name and style of Ramapo Water Company and the following are hereby declared to be

The Corporate name of the said Company.

The object for which the Company is formed.

The amount of the Capital Stock of the said Company.

The number of Shares of which the said Capital Stock of the Company shall consist.

The term of existence of the Company.

The number of Trustees and their names.

The names of those who shall manage the concerns of the said Company for the first year.

The names of the Town and County in which the operations of the said Company are to be carried on.

1. The corporate name of the said Company is hereby declared to be: Ramapo Water Company.

31 2. The objects for which the Company is formed are as follows: The accumulating, storing, conducting, selling, furnishing and supplying water for mining domestic manufacturing, municipal and agricultural purposes to cities, to other corporations and to persons that may lawfully contract therefor.

3. The Capital Stock of the said Company shall be Two million five hundred thousand (\$2,500,000) dollars, which shall be divided into Twenty-five thousand (25,000) Shares of one hundred (100) Dollars each.

4. The said Company shall commence on the thirteenth day of September in the year one thousand eight hundred and eighty-seven and shall continue in existence for the term of fifty years.

5. The number of Trustees shall be five.

Their names are: George A. Evans of Brooklyn, N. Y.

Josiah G. Chase of Cambridge, Mass.

William J. McAlpine, of Staten Island, N. Y.

Daniel B. Hatch of New York City, N. Y.

Henry Martin Blanchard of New York City, N. Y.

The names of those who shall manage the concerns of the said Company for the first year, are:

George A. Evans, Josiah G. Chase, William J. McAlpine, Daniel B. Hatch and Henry Martin Blanchard.

6. The name of the Town and County in which the operations of the said Company are to be carried on. The operations of the Company are to be carried on mainly in the Counties of Rockland

and Orange, State of New York and the principal office

32 for the transaction of business shall be Brooklyn, N. Y.

Witness our hands and seals, this twelfth day of September, 1887.

GEO. A. EVANS.	[L. S.]
JOSIAH G. CHASE.	[L. S.]
WM. McALPINE.	[L. S.]

Witness:

P. ELBERT NOSTRAND.

## STATE OF NEW YORK,

*City of New York, County of New York, ss:*

On the twelfth day of September in the year one thousand eight hundred and eighty-seven before me personally came George A. Evans, Josiah G. Chase and William J. McAlpine to me known, and known to me to be the individuals described in, and who executed the foregoing instrument, and they acknowledged that they executed the same.

P. ELBERT NOSTRAND,  
*Notary Public, Kings County.*

Certificate filed in New York Co.

## STATE OF NEW YORK,

*City and County of New York, ss:*

I, James A. Flack, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, do hereby certify that P. Elbert Nostrand has filed in the Clerk's office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument, duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe the signature to the said certificate of proof or acknowledgement to be genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 13th day of September, 1887.

[SEAL.]

JAMES A. FLACK, *Clerk.*

## EXHIBIT B.

## Receipt for Organization Tax.

Treasurer's Office.

State of New York.

\$3125.

Albany, September 14th, 1887.

Received from Ramapo Water Company Thirty one hundred and twenty-five Dollars, in full of tax, of one-eighth of one per centum, upon the capital stock of \$2,500,000 of the above named Company, for the privilege of said organization pursuant to Chapter 143, Laws of 1886.

ELLIOT DANFORTH,  
*Deputy Treasurer.*

C. R. HALL,  
*Deputy Comptroller.*

3-715

## EXHIBIT C.

*Chapter 985 of the New York Laws of 1895.*

**An Act to Limit and Define the Powers of the Ramapo Water Company.**

Became a law June 11, 1895, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Ramapo Water Company, heretofore incorporated under Chapter Forty of the laws of eighteen hundred and forty eight, entitled, "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," and the amendments thereto, by a certificate of incorporation filed in the office of the Secretary of State the fourteenth day of September, eighteen hundred and eighty-seven, may acquire in the same manner specified and required in and by an act entitled, "An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, and the acts amendatory thereof and supplemental thereto," such lands and waters along the watershed of the Ramapo, and along such other watersheds and their tributaries, as may be suitable for the purpose of accumulating and storing the waters thereof, and shall have the power of accumulating, storing, deducting, selling, furnishing and supplying water for mining, domestic, manufacturing, municipal and agricultural purposes, to any city, town and village and to other corporations, and to the persons that may lawfully contract 35 therefor, and may lease its ponds, lakes and reservoirs for a term of years to any individual or corporation for the purpose of cutting ice thereon. Provided, however, that such company shall not sell, furnish or supply or otherwise allow the water power to be used for manufacturing or any other purpose as may be noxious, dangerous or offensive.

SEC. 2. Said corporation, before constructing any parts of its works in any county in which it does business, or instituting any proceedings for the condemnation of real property therein, shall make a map of the route adopted and land to be taken by it in such county, which said map shall be certified by the president and engineer of the corporation, or a majority of the directors, and shall file the same in the office of the clerk of the county through which the route runs or in which the said lands are situate. Said corporation shall give written notice to all actual occupants of land so designated, and which have not been purchased by or given to it, of the time and place such map or maps were filed. Any such occupant or the owner of the land aggrieved by the proposed location may, within fifteen days after receiving such notice, give ten days' written notice to such cor-

poration and to the owners or occupants of lands to be affected by any proposed alteration, of the time and place of an application to a justice of the supreme court in the judicial district where the lands are situated, by petition duly verified, for the appointment of commissioners to examine the lands so designated. The petition shall state the objections to the route designated, shall designate the route to which it is proposed to alter the same, and shall be accompanied with a survey, map and profile of the route designated by the

corporation, and of the proposed alteration thereof, and copies  
36 thereof shall be served upon the corporation and such owners

or occupants with the notice of the application. The justice may, upon the hearing of the application, appoint three disinterested persons, one of whom must be a practical civil engineer, commissioners to examine the route proposed by the corporation, and the route to which it is proposed to alter the same, and after hearing the parties, to affirm the route originally designated or adopt the proposed alteration thereof, as may be consistent with the just rights of all parties and the public, including the owners or occupants of the lands upon the proposed alteration; but no alteration of the route shall be made except with the concurrence of the commissioner who is a practical civil engineer, nor shall it cause greater damage or injury to lands or materially lengthen the route designated by the corporation, nor shall it substantially change the general line adopted by the corporation. The commissioners shall, within thirty days after their appointment, make and certify their written determination, which, with the petition, map and survey, and any testimony taken before them, shall be immediately filed in the office of the county clerk of the county in which the lands taken are situate. Within twenty days after such filing any party may, by written notice to the other, appeal to the general term of the supreme court from the decision of the commissioners, which appeal shall be heard and decided at the next term held in the department in which the lands of the petitioners or any of them are situated, for which the same can be noticed according to the rules and practice of the court.

On the hearing of such appeal, the court may affirm the route  
37 proposed by the corporation or may adopt that proposed by the petitioner. The commissioners shall each be entitled to six dollars per day for their services, and to their reasonable and necessary expenses, to be paid by the persons who apply for their appointment. If the route, as designated by the corporation, is altered by the commissioners or by the order of the court, the corporation shall refund to the petitioner the amount so paid, unless the decision of the commissioners is reversed upon appeal taken by the corporation. Said corporation shall not institute any proceedings for the condemnation of real property in any county until after the expiration of fifteen days from the service by it of the notice required by this section.

SEC. 3. Said corporation may contract with any corporation in this State, public or private, to furnish water for any of the purposes in this act mentioned, and every corporation in this State is hereby

authorized to enter into such contracts with said corporation for any length of time that may be deemed advisable.

SEC. 4. Said corporation may lay pipes for the purpose of conducting water for the purposes of its business under any of the navigable waters of this State, provided they are laid so as not to interfere with the navigation of such waters.

SEC. 5. This act shall take effect immediately.

38      District Court of the United States, Southern District of New York.    Equity, 11-127.    Ramapo Water Company, Plaintiff, against the City of New York and Charles Strauss, Charles N. Chadwick, and John F. Galvin, individually and as members of the Board of Water Supply of The City of New York, Defendants.    Answer.    Frank L. Polk, Solicitor for Defendants, Hall of Records, Borough of Manhattan, City of New York.    Filed May 15, 1914.

39      District Court of the United States, Southern District of New York.

Equity.    11-127.

RAMAPO WATER COMPANY, Plaintiff,  
against

THE CITY OF NEW YORK, CHARLES STRAUSS, CHARLES N. CHADWICK and John F. Galvin, Individually and as Members of the Board of Water Supply of the City of New York, Defendants.

*Answer.*

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, in Equity Sitting:

The above-named defendants, The City of New York, Charles Strauss, Charles N. Chadwick and John F. Galvin, jointly and severally answering the bill of complaint herein of Ramapo Water Company, complainant, say:

I. The defendants admit the description and habitation of the defendant and that the plaintiff was organized under the laws of the State of New York, but are without knowledge as to whether the plaintiff is an existing corporation. The defendants and each of them

40      deny that the said bill of complaint sets forth any grounds of suit against them, or any of them, under the constitution and laws of the United States, as alleged in the First paragraph of the Bill of Complaint.

II. The defendants admit that the plaintiff was incorporated under the laws of the State of New York for the purpose of accumulating, storing, conducting, selling, furnishing and supplying water for mining, domestic, manufacturing, municipal and agricultural purposes to cities, to other corporations and to persons that might lawfully contract therefor, as alleged in paragraph marked "Second" of the complaint.

III. The defendants are without knowledge as to whether the plaintiff paid to the State of New York the sum of \$3,125. for the privilege of its incorporation, but allege that whether that sum or any other sum was paid to the said State of New York is immaterial so far as any issues that can be raised in this case are concerned.

IV. The defendants admit that the capital stock of the plaintiff was \$2,500,000., divided into 25,000 shares of \$100. each; but they and each of them deny that all of said stock was duly issued within one year after the incorporation of the plaintiff, but to the contrary thereof they aver, upon information and belief, that said capital stock was never, nor any part thereof, paid in money, as required by the statute under which said plaintiff was incorporated.

V. The defendants admit that Chapter 40 of the New York Laws of 1848, Chapter 85 of the New York Laws of 1880, and Chapter 472 of the Laws of 1881 were in force as laws of the State of New York at the time the plaintiff was incorporated and that the plaintiff was incorporated under and by virtue of said laws. The defendants further admit that by virtue of its incorporation under

41 said laws, the plaintiff was granted whatever rights, powers and privileges are set forth in said laws and in plaintiff's certificate of incorporation; that such rights, powers and privileges included the right to acquire, take, lease and convey land and water and water power suitable for its corporate purposes; the right to exercise the State's power of eminent domain; the right to acquire title to land and water for its corporate purposes in the manner specified and required by an act of the Legislature of New York, known as the General Railroad Act and constituting Chapter 140 of the Laws of 1850, entitled "An Act to authorize the formation of railroad corporations and to regulate the same"; the right to lay pipes for the purpose of conducting water for the purpose of its business under any of the navigable waters of the State of New York; the right to contract with municipalities, including The City of New York, and private corporations, to furnish water for any of the purposes specified in said certificate of incorporation, but they deny that any vested right was granted plaintiff or any franchise except that of being a corporation for the objects and purposes set forth in its certificate of incorporation, and they allege that the State of New York specifically reserved the right to alter, amend and repeal the acts under which the plaintiff was incorporated and by virtue of which it was granted any such rights, powers, privileges or franchise.

VI. The defendants are without knowledge as to whether the plaintiff duly accepted the rights, powers or privileges set forth in said laws and in its articles of incorporation, or as to whether upon the faith of any rights, powers or privileges the plaintiff paid the sum of \$3,125. to the State of New York; or performed a vast amount of work or any work; or expended a vast sum of money or any money in and about the prosecution and conduct of its corporate business; or incurred and paid large obligations; but they deny, 42 upon information and belief, that numerous persons or any persons subscribed for and purchased and paid for its capital stock.

VII. The defendants are without knowledge as to whether the plaintiff immediately or at any other time after its incorporation commenced the transaction of its business or undertook with great diligence, or otherwise, to discharge its corporate duties; or whether at large expense, or at any expense, or upon the faith of any rights, powers or privileges granted to it by the State of New York, the plaintiff investigated or located the available sources from which it could obtain water; or devised plans for accumulating, storing, selling, furnishing or supplying water for the purposes and to the persons specified in its certificate of incorporation; or negotiated for the sale thereof; or partially executed plans or took steps to acquire by purchase the land and water necessary for the attainment of its corporate purposes; or as to whether the plaintiff between the date of its incorporation and June 7, 1890, made extensive and expensive surveys or any surveys of lands and waters; or acquired options for the purchase of any real estate; or filed in the office of the Clerks of various counties of the State of New York any maps of lands, streams, lakes or ponds; or as to whether the plaintiff intended to acquire, use and occupy any lands, streams, lakes or ponds for the attainment, execution or pursuit of its corporate objects or purposes; but these defendants and each of them deny upon information and belief that the plaintiff took steps to acquire by the exercise of the power of eminent domain any land or water.

VIII. The defendants admit upon information and belief that on June 7, 1890, the Governor of the State of New York approved Chapters 563, 564 and 567 of the Laws of 1890, enacted by the Legis-

lature of said State, whereby said Chapter 40 of the Laws  
43 of 1848, Chapter 85 of the Laws of 1880, and Chapter 472  
of the Laws of 1881 that were in force at the time of the incorporation of the plaintiff and from which it derived whatever rights, powers and privileges it might have, were repealed, and that said repealing acts contained clauses whereby it was enacted that

"the repeal of an act or any part of it specified in the annexed schedule shall not affect or impair any act done, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to May 1, 1891, under or by virtue of any law so repealed, but the same may be asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such law had not been repealed; and all actions and proceedings, civil or criminal, commenced under or by virtue of the laws so repealed and pending on April 30, 1891, may be prosecuted and defended to final effect, in the same manner as they might under the laws then existing, unless it shall be otherwise specifically provided by law."

But these defendants are without knowledge as to whether the plaintiff, at the time of, or prior to, the enactment of the Act of June 7, 1890, with great diligence or otherwise, was perfecting its plans in the pursuit and execution of its corporate objects, purposes, functions or duties.

IX. The defendants and each of them on information and belief deny that any rights, powers, privileges or franchises were granted

to the plaintiff that were or are property of the plaintiff, of which it could not be legally deprived under Section 10 of Article I of the Constitution of the United States and the Fourteenth Amendment of said Constitution, but to the contrary thereto, these defendants allege that the State of New York specifically reserved the right to alter, amend or repeal the acts granting any such rights, powers, privileges or franchise.

44 X. The defendants are without knowledge as to whether by reason of or as a result of the enactment of Chapters 563, 564 and 567 of the Laws of 1890, whereby said Legislature of New York repealed the various laws under which the plaintiff had been incorporated, various questions, doubts and uncertainties arose in the minds of many persons, or any persons, with respect to the exact legal status of the plaintiff, or as to the nature and extent of any rights, powers, privileges or franchises possessed by it; but they and each of them deny upon information and belief that in consequence of such questions, doubts or uncertainties the plaintiff was greatly hindered, delayed, prejudiced or impeded in the prosecution and development of its plans or in the prosecution of its business, or in the discharge of its corporate duties and functions; or that plaintiff continued to be hindered, delayed, prejudiced or impeded until June 11, 1895, when Chapter 985 of the Laws of 1895, entitled "An Act to limit and define the powers of the Ramapo Water Company" became a Law of the State of New York, but the defendants admit that on June 11, 1895, Chapter 985 of the Laws of 1895 became a law of the State of New York.

XI. The defendants are without knowledge as to whether the plaintiff accepted said Chapter 985 of the Laws of 1895 after it became a law, but admit that said statute purported to grant and confirm to the plaintiff the rights, powers and privileges set forth in said statute, but they deny that any such rights, powers or privileges constituted property of the plaintiff of which it could not be legally deprived or constituted a contract the obligations of which could not be legally impaired, but to the contrary thereof the defendants, upon information and belief, allege that the State of New York reserved the right to alter, amend or repeal said statute.

XII. The defendants are without information as to whether the plaintiff upon the faith of Chapter 985 of the Laws of 45 1895, or in reliance upon its provisions or in pursuance of the rights, powers or privileges alleged to have been granted and secured to it, or in the execution and discharge of its corporate functions, duties, objects and business, continued, after the enactment of said statute, to investigate and locate the available sources of water supply in the State of New York; or to make surveys of the water sheds or of the lands, streams, lakes and ponds necessary and desirable to be acquired for reservoirs, aqueducts, pipe lines and other appurtenances; or to do the acts necessary and desirable for accumulating, storing, conducting, selling, furnishing and supplying water for the purposes or to the persons and corporations specified in its certificate of incorporation and the statutes above named.

XIII. The defendants admit that the plaintiff, between June 22,

1895, and June 28, 1899, filed maps in the office of the Clerks of various counties, but they are without knowledge as to whether said maps were made by the plaintiff in reliance upon the statutes aforesaid; or in the execution and discharge of its corporate functions and duties; or for the purpose of carrying on its corporate business; or as to when said maps were made; or that any route was adopted; or that such maps were duly certified as required by the statute; but the defendants and each of them, upon information and belief, deny that the plaintiff by filing maps appropriated or could appropriate any lands or waters for its corporate business.

XIV. The defendants are without information as to whether, as alleged in the Fourteenth paragraph of the bill of complaint, the maps filed by the plaintiff were upwards of 100 and covered approximately 1,000 square miles of land and water in Westchester, Putnam, Orange,

46 Dutchess, Green, Ulster, Delaware, Schoharie and other counties of the State of New York; or whether said maps covered substantially the whole of the drainage areas known as the Watersheds of the Esopus, Catskill, Schoharie and Rondout Creeks in the State of New York, or the reservoir sites, aqueduct and pipe line routes and other lands necessary to accumulate and store the waters from the said watersheds and creeks and conduct the same to the City of New York and other municipalities, persons and corporations; or whether the plan and design of the plaintiff as set forth on said maps, was to accumulate and store the waters of said watersheds and of said Rondout, Schoharie, Catskill and Esopus Creeks at various points in the State of New York by means of storage reservoirs and conduct said waters by means of aqueducts and pipe lines to the said limits of the City of New York and there deliver said water to the said City; or whether the maps filed by the plaintiff covered or designated all the routes, lands and waters necessary to be acquired, occupied and used to carry out its plan and design and make the same effective; and the defendants allege upon information and belief that the plaintiff has never instituted proceedings to acquire any lands by condemnation and never had any intention so to do unless it could first secure a contract with the City of New York to furnish that City with water; and that if, as alleged, the plaintiff filed the maps covering 1,000 square miles it was simply an attempt to preempt all the available sources of water supply and thereby force such a contract upon the City of New York; and the defendants further allege upon information and belief that upon failing to obtain a contract for the sale of water to said The City of New York the plaintiff abandoned any intention of acquiring any lands, lakes, streams or ponds.

XV. The defendants admit upon information and belief that the plaintiff obtained options or contracts for the purchase of lands some time in the years 1898 and 1899 but the defendants are without knowledge as to the number of such options or contracts; or the price to be paid therefor; or as to whether such land was to be acquired and used by the plaintiff in carrying out its plans or in pursuit of its corporate purposes; and these defendants and each of them allege, upon information and belief, that such options and contracts obtained by the plaintiff for the purchase of land were

mere options which expired and terminated without being exercised and without any vested rights being acquired thereunder.

XVI. The defendants are without knowledge as to whether the locating and surveying of any watersheds, reservoir sites, aqueducts and pipe lines or the making of any maps and plans, or the acquisition of any contracts and options, or any other acts alleged to have been performed by the plaintiff in and about the carrying on of its business or in the exercise of its corporate purposes, necessarily or otherwise involved the employment of skilled engineers, surveyors, draughtsmen or other employees; or the expenditure of large or any sums of money; or necessarily or otherwise consumed a large amount of time and labor; or whether the plaintiff as a result of its employment of any persons, or the expenditures of any time, labor or money acquired a vast amount of or any data or information; but these defendants and each of them deny that any part of any data or information obtained by and belonging to the plaintiff has been or is being taken, appropriated or used by them.

XVII. The defendants and each of them deny that the plaintiff by its incorporation and organization or by the making and filing of maps, acquired or became possessed of a vested right or franchise to construct and maintain upon the lands and waters covered by and designated on any maps, reservoirs, dams, aqueducts or other appur-

tenances of a system of water supply; or to accumulate, store,  
48 conduct, sell, furnish or supply for the purposes and to the persons or corporations specified in its certificate of incorporation, or for any other purpose, the water contained in or to be derived from the watersheds, lands, streams, lakes or ponds covered by and designated on such maps; or to otherwise use the lands, streams, lakes or ponds covered by and designated on such maps for the accomplishment of the plaintiff's corporate objects or purposes or the prosecution of its business, or for any other object, purpose or business; or that from and after the time of the filing of maps the lands, streams, lakes or ponds covered by and designated on such maps were, ever have been or are now legally or equitably subject to any franchise of the plaintiff; or that any such right or franchise was granted to the plaintiff by the State of New York under and by virtue of a contract of the plaintiff with said State; or that any such right or franchise was or is a contract right or a right of property in the possession and use and enjoyment of which the plaintiff was or is entitled to the protection of the Constitution of the United States and the amendments thereof, but to the contrary hereof these defendants and each of them allege, on information and belief, that the only rights, powers, privileges or franchise granted to said plaintiff by its incorporation and organization and the making and filing of maps, was the right to acquire for the objects and purposes set forth in its certificate of incorporation, the lands and water covered by and designated on such maps by purchase, or by condemnation in the mode prescribed by the statutes and upon payment of just compensation to the owners thereof, and that the State of New York reserved the right to repeal and did repeal the statutes under which the plaintiff was granted such

rights, powers and privileges before the plaintiff acquired any vested right in any land or water.

XVIII. The defendants and each of them deny that prior to the time the plaintiff alleges to have filed its maps, to wit, 1887, 49 1888, or at any subsequent time, that the Courts of the State of New York announced or declared the law of said State to be that the effect of the filing of maps under the provisions of said General Railroad Act of the State of New York was to give to the corporation filing such maps a vested and exclusive right or franchise to the exclusive use and occupation of the lands covered by said maps for its own corporate purposes, free from the interference of any other persons or corporations; or that said Courts declared the law of said State to be that the filing of such maps had the effect alleged in paragraph 17th of the bill of complaint, or that any such law entered into and became a part of any contract between the plaintiff and said State.

XIX. Defendants, upon information and belief, admit that the plaintiff some time during the year 1898 made an offer to the City of New York to supply said City with pure and wholesome water and that the same was taken under consideration, and that negotiations with respect to said offer continued until November, 1899, when the City deferred action on said offer for a period of three months, but they allege that all of the allegations in paragraph numbered 19th are without materiality as to any issues that can be raised in this case.

XX. The defendants, upon information and belief, deny that at the time the plaintiff made said offer to supply The City of New York with water that said City was in actual need of a new and additional supply of pure and wholesome water or that such need was daily increasing and becoming more urgent or that said City was without the resources necessary to construct an adequate system of water supply; but these defendants, upon information and belief, admit that The City of New York was without the legal power and authority to enable it to condemn the lands and water 50 necessary for such purposes at that time, and that by reason of the limitations contained in the Constitution of the State of New York, was unable to borrow money for that purpose, but they allege that any such facts are without materiality so far as any alleged claim of the plaintiff in this case is concerned.

XI. These defendants admit that during the latter part of the year 1899 the question of municipal ownership of system of water supply and other public utilities began to be agitated in said City, and that the public authorities of said City instituted and carried on extensive investigations into the available sources of water supply and to the ways and means by which said City could obtain an additional supply of water for its future needs; but these defendants are without knowledge as to whether at the time of those investigations the plaintiff's offer to supply water to The City of New York was under consideration, or whether said offer had or had not been rejected, or whether said public authorities announced that said investigations were for the purpose of enabling them to determine

whether they should accept the said offer of plaintiff. The defendants further admit that such investigations continued during the years 1900 to 1905, but they and each of them deny, upon information and belief, that during such time the authorities of said City deferred action upon the offer made by plaintiff, or that said offer remained during that time open and unacted upon. These defendants allege, however, that the allegations set forth in paragraph marked 21st are without materiality as to any issues that can be raised in this case.

XXII. The defendants admit that during the investigations instituted and carried on by and under the directions of the public authorities of the City of New York, said public authorities applied to the Legislature of the State of New York for legislation that would enable said City to build its own water

51 supply system and procured the adoption of an amendment to the Constitution of the State of New York, whereby said City was enabled to incur the indebtedness necessary in order to provide for such water supply, and that on March 19, 1901, Chapter 985 of the Laws of 1895 was repealed by the Legislature of the State of New York by an act known and designated as Chapter 122 of the Laws of 1901; but these defendants and each of them, upon information and belief, deny that such legislation is unconstitutional or in violation of Section 10 of Article I of the Constitution of the United States and the Fourteenth Amendment of said Constitution; or that such legislation impaired the obligations of any contract of the State of New York with the plaintiff; or that such legislation deprived the plaintiff of any property without due process of law.

XXIII. The defendants admit that the legislature of the State of New York in 1905 enacted a statute entitled, "An act to provide for an additional supply of pure and wholesome water for The City of New York; and for the acquisition of lands or interests therein and for the construction of the necessary reservoirs, dams, aqueducts, filters and other appurtenances for that purpose; and for the appointment of a commission with the powers and duties necessary and proper to attain these objects", which statute is known and designated as Chapter 724 of the Laws of 1905 and that it became a law of said State of New York on June 3, 1905. The defendants further admit that said statute provides that the Mayor of said City of New York shall appoint three persons who shall be Commissioners for the purposes specified therein, and that the persons so appointed shall constitute a Board or Commission to be called the Board of Water Supply of The City of New York. They further admit that by said statute it was made the duty of said Board of

52 Water Supply to proceed to ascertain what sources were most available, desirable and best for an additional supply of pure and wholesome water for said City; that said Board was directed, after investigation, to make a report to the Board of Estimate and Apportionment of said City with recommendations as to what action should be taken so that said two Boards might determine what other source or sources and in what manner said City might best secure an additional supply of pure and wholesome water,

and that it was further provided in said statute that said City should have no power to acquire, take or condemn lands under said statute unless maps and plans covering the work be submitted to and approved by the State Water Supply Commission.

XXIV. These defendants admit that on June 3, 1905, there also became a law of said State of New York, entitled "An Act to establish the State Water Commission to define its powers and duties and make an appropriation therefor," which act is known and designated as Chapter 723 of the Laws of 1905. That said act provided for the appointment of five citizens of the State of New York who should constitute a commission to be known as the State Water Supply Commission, and that in and by said act it was provided:

"No municipal corporation or other civil division of the State and no board, commission or other body of or for any such municipal corporation or other civil division of the State shall, after this act takes effect, have any power to acquire, take or condemn, lands for any new or additional sources of water supply until it has first submitted the maps and profiles therefor to the said commission as hereafter provided, and until such commission shall have approved the same."

They further admit that such State Water Supply Commission was given power and authority to approve, modify or reject any application made to it by a municipal corporation or other 53 division of the State for the approval of maps and profiles for a new or additional source of water supply; but these defendants allege that in and by said statute it was further provided that such maps and profiles shall be accompanied by a plan or scheme to determine and provide for the payment of the proper compensation for any and all damages to persons or property, whether direct or indirect, which will result from the acquiring of such lands and the execution of such plans; for a hearing upon public notice to all persons, municipal corporations or other Civil divisions of the State that may be affected by such plans, and that the decision of the Commission on any application may be reviewed by certiorari proceedings.

XXV. The defendants admit that on or about June 9, 1905, the then Mayor of the City of New York appointed three persons to constitute the Board of Water Supply of said City, and that said persons entered upon the discharge of their duties under said statute, and that they and their successors in office have continued to act and are now acting as said Board of Water Supply. That the present members of said Board are the defendants Charles Strauss, Charles N. Chadwick and John F. Galvin, and that said defendants now constitute the Board of Water Supply of the City of New York and are acting as such under Chapter 724 of the Laws of 1905 and the amendments thereof.

XXVI. The defendants admit that on October 5, 1905, the said Board of Water Supply, acting under the provisions of said Chapter 724 of the Laws of 1905, submitted to the Board of Estimate and Apportionment of said City a report as provided by section 2 of said act. That on or about October 27th said Board of Estimate and

Apportionment approved and adopted said report as the final map and plan covering the entire work contemplated by said  
54 Chapter 724; that said Board of Water Supply thereafter prepared and submitted certain detailed maps, but these defendants and each of them deny that such detailed maps were prepared and submitted in purported and attempted compliance with Section 5 of Chapter 724 of the Laws of 1905, or that said detailed maps were thereafter approved by said Board of Estimate and Apportionment and transmitted and filed in purported and attempted compliance with Sections 5 and 6 of said act, but to the contrary thereof the defendants allege that said maps were prepared and submitted in strict conformity with the requirements of Section 5 of said Chapter 724 and that they were thereafter approved by the Board of Estimate and Apportionment, transmitted and filed in strict conformity with the requirements of Sections 5 and 6 of said act. The defendants further admit that thereafter and during the years 1907 to 1913 inclusive, said City and said Board of Water Supply, through the Corporation Counsel, made numerous applications for the appointment of Commissioners of Appraisal and instituted numerous proceedings, but these defendants and each of them deny that said applications and proceedings were in purported and attempted compliance with Sections 7 and 8 of said statute, but to the contrary thereto the defendants allege that such applications and proceedings were made in strict conformity with the requirements of Sections 7 and 8 of said statute. These defendants further admit that numerous court orders appointing Commissioners of Appraisal were obtained by said City and said Board of Water Supply but they and each of them deny that such orders were obtained in purported and attempted compliance with Section 9 of said act and under color of an authority claimed to be contained in and conferred by said Section, but to the contrary thereof, the defendants allege that said orders appointing Commissioners of

55 Appraisal were obtained in strict conformity with the requirements of Section 9 of said act, and of an authority contained in and conferred by said section. The defendants further admit that numerous oaths of Commissioners of Appraisal were taken, subscribed and filed, but they and each of them deny that said oaths were taken, subscribed and filed in purported and attempted compliance with Section 10 of such statute and under color of an authority claimed to be contained in and conferred by such statute, but to the contrary thereof the defendants allege that said oaths were taken, subscribed and filed in strict conformity with Section 10 of said statute and under an authority contained in and conferred by said statute. The defendants and each of them further deny that said applications were made or that said proceedings were instituted or that said orders were obtained and said oaths taken, subscribed and filed under color of an authority claimed to be contained in and conferred by certain decisions of the State Water Supply Commission of the State of New York, but to the contrary thereof these defendants allege that said applications were made and such proceedings were instituted and said oaths taken,

subscribed and filed under specific authority contained in and conferred by decisions of the State Water Supply Commission of the State of New York.

XXVII. The defendants admit that on or about November 3, 1905, the said City of New York made application to the State Water Supply Commission for the approval of the maps and profiles so previously approved and adopted by the Board of Estimate and Apportionment on October 5, 1905; that thereafter and on or about the 14th day of May, 1906, said State Water Supply Commission made and filed a decision in writing upon said application wherein and whereby said State Water Supply Commission approved said application and said maps and plans with certain modifications thereof particularly set forth and described in said decision; 56 that on or about October 15, 1907, said State Water Supply

Commission made and filed another decision in writing, upon another application made to it by said City, wherein and whereby said State Water Supply Commission approved a modification in the line of the aqueduct mentioned and specified in said first named application of said City to said Commission, but these defendants allege that on the hearing before said State Water Supply Commission on the 27th day of November, 1905, the plaintiff appeared and was heard in opposition to the approval by said Commission of the plans of the City of New York and that in the decision of said Commission of May 14, 1906, it was held that said plans "make fair and equitable provisions for the determination and payment of any and all damages to persons and property both direct or indirect which will result from the execution of said plans" and that no steps were taken by the plaintiff to review said decision, and the time within which such review could be had has long since expired.

XXVIII. The defendants admit that said maps and plans of the City of New York, approved by the State Water Supply Commission, provided for the acquisition of large quantities of land and water in and around the drainage areas known as the watersheds of Esopus, Rondout and Catskill Creeks in the State of New York, and the erection of dams and reservoirs for accumulating and storing said waters, the construction of an aqueduct for conducting said waters to the City of New York and the acquisition of the lands necessary to be used and occupied for those purposes; but they deny that the plans of the City of New York for the acquisition of the drainage area known as the watershed of Schohaire Creek was approved or has since been approved by the State Water Supply Commission or its successor, the State Conservation Commission. The

defendants are without knowledge as to whether the lands 57 and waters proposed to be utilized by the said City of New

York, as in said plans shown and provided, are in large part or to a great extent the same lands and waters that are covered by or designated on maps filed by the plaintiff as set forth in the Bill of Complaint; or whether the plans of said City for accumulating, storing and conducting said waters are similar to or practically identical with the plans alleged to have been previously made and designed by the plaintiff for that purpose; but they deny

that the execution of the plans of the City of New York will or do involve the appropriation, use and occupation by said City of any lands, streams, lakes or ponds previously appropriated, used or occupied by the plaintiff, but to the contrary thereof these defendants allege that the plaintiff had no vested rights in any lands or water rights acquired by said City under and by virtue of Chapter 724 of the Laws of 1905 and the acts amendatory thereof, and that the State of New York four years prior to the enactment of said Chapter 724 of the Laws of 1905, and before the plaintiff had acquired any vested rights in any of the lands or water rights acquired by the City of New York, repealed the acts under which the plaintiff was authorized to acquire any such lands or water rights.

XXIX. The defendants admit that they have commenced and are now continuing the construction and erection of reservoirs, dams, aqueducts, filters and other appurtenances to a water supply, and that they have acquired the ownership of lands, streams, lakes and ponds and the right to use the same, and that it is their intention to proceed with the erection and construction of the dams, reservoirs, aqueducts and appurtenances until the same shall have been completed, and of then accumulating the waters from the streams and watersheds

and of storing said waters in said reservoirs and conducting  
58 said water to the City of New York and of using said waters

for municipal, domestic and other purposes; but they deny that any of said acts were done or are being done in disregard of the protests and objections of the plaintiff or in violation of any rights of the plaintiff, or that they were acting under color of any authority claimed by them; or that they have entered and are now trespassing upon any lands, streams, lakes or ponds owned by the said plaintiff; or that any of the acts done by the defendants are in violation or in disregard or in derogation of any rights or franchises of the plaintiff; or that they have done any damage to said plaintiff; but, to the contrary thereof, the defendants allege that they acquired such lands, streams, lakes and ponds, and are constructing and erecting said reservoirs, dams, aqueducts, filters and other appurtenances under and by virtue of an authority granted to them by Chapter 724 of the Laws of 1905. That said Chapter provides adequate machinery for the ascertainment, upon notice and hearing of compensation as provided for in Article I, Paragraph 7 of the Constitution of the State of New York; that they had expended or incurred liabilities up to January 1st, 1914, in the construction and erection of said reservoirs, dams, aqueducts and appurtenances and in the acquisition of the necessary lands, streams, lakes and ponds, comprising over 21,000 acres, the sum of \$129,817,000, and have since expended or incurred large additional sums in the prosecution of this work; that the statutes under which the plaintiff claims to have appropriated the lands, streams, lakes and ponds acquired by the City of New York, were repealed many years prior to the enactment of said Chapter 724 of the Laws of 1905 under which the City of New York acquired from the owners such lands, streams, lakes and ponds and commenced and prosecuted the construction and erection of said reservoirs, dams, aqueducts

59 and other appurtenances necessary to a water supply; that the plaintiff during the period between the repeal of said statutes and the enactment of said Chapter 724 of the Laws of 1905, nor since that time while the City has been expending the vast sums of money as aforesaid, of which the plaintiff was well aware, questioned the constitutionality of said repealing acts or the constitutionality of ~~and~~ Chapters 723 and 724 of the Laws of 1905 or the decision of the State Water Supply Commission that said Chapter 724 made fair and equitable provision for the determination and payment of any and all damages to persons and property both direct and indirect.

XXX. The defendants admit that if they complete the construction of the reservoirs, dams, aqueducts and appurtenances now being proposed to be erected by them as aforesaid, and accumulate and store said waters and conduct said waters to the City of New York and there use said waters for municipal, domestic and other purposes in accordance with the maps and plans approved by the State Water Supply Commission, that it will be impossible for the plaintiff to take advantage of and use said lands, streams, lakes and ponds; but they deny that any rights, powers, privileges or franchises granted to and vested in the plaintiff will thereby be impaired, injured, damaged, destroyed or rendered useless or valueless to the plaintiff or its stockholders; or that the accumulating, storing, conducting and using of said waters by the defendants will thereby cause or inflict upon the plaintiff or any one else irreparable injury or any injury.

XXXI. The defendants and each of them deny that any acts done and performed by them under Chapters 723 and 724 of the Laws of 1905 and the said decisions of the State Water Supply Commission have impaired, destroyed or injured any rights, powers, privileges or franchise of the plaintiff, but they admit that aside

60 from the fact that they instituted proceedings in the Supreme Court of the State of New York as provided in said Chapter

724 of the Laws of 1905 and have acquired by purchase or condemnation the right, title and interest of every person owning or interested in the lands, streams, lakes and ponds necessary for the construction of its reservoirs, aqueducts and appurtenances for accumulating the waters from streams and watersheds and the storing and taking such waters to the City of New York, that they have not, nor have any of them, made any offer or taken any steps or proceedings to acquire any alleged rights, privileges or franchises of the plaintiff; or paid or offered to pay to the plaintiff any compensation whatsoever for any of its alleged rights, powers, privileges and franchises; or any damages for any alleged impairment or destruction thereof or injury thereto. The defendants and each of them further deny that it was or is now well known to them that the plaintiff was the owner and possessor of any rights, powers, privileges or franchises, but to the contrary thereof they allege on information and belief that the plaintiff was not the owner or possessor of any rights, powers, privileges or franchises in the lands,

streams, lakes or ponds acquired by the City of New York under and by virtue of Chapters 723 and 724 of the Laws of 1905.

XXXII. The defendants and each of them deny that the obligations of any contract of the plaintiff with the State of New York are being impaired by the laws of the State of New York or by any acts of the defendants in contravention of Section 10 of Article I of the Constitution of the United States; or that in any manner or by any means any property of the plaintiff is being taken or that the plaintiff is being deprived of its property without due process of law or without compensation or in contravention and violation of the Fourteenth Amendment of the Constitution of the United States.

61       XXXIII. These defendants and each of them for a further answer to the Bill of Complaint, and as a defense thereto, allege that said Bill of Complaint, does not set forth any contract between the plaintiff and the State of New York or any legislation by the State of New York, or any acts of the City of New York, impairing any contracts between the plaintiff and the State of New York. The defendants submit that it appears from the plaintiff's own showing by said Bill of Complaint that it is not entitled to the relief sought for or any relief whatever against these defendants or any of them; and they insist, the premises considered, that the complainant has no right to any further answer to said Bill of Complaint, or any part thereof, or to any accounting or injunction prayed for in said bill; that it appears from the face of the bill that this Court is without jurisdiction and that the said bill is wholly without equity, and they pray the said bill of complaint be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FRANK L. POLK,  
*Solicitor for the Defendants.*

Office & Post Office Address, Hall of Records, Borough of Manhattan, City of New York.

LOUIS C. WHITE,  
*Of Counsel.*

62       District Court of the United States, Southern District of New York.

RAMAPO WATER COMPANY, Plaintiff,  
against

THE CITY OF NEW YORK, CHARLES STRAUSS, CHARLES N. CHADWICK, and John F. Galvin, Individually and as Members of the Board of Water Supply of the City of New York, Defendants.

STATE OF NEW YORK,  
*County of New York, ss:*

Louis H. Hahlo, being duly sworn, says that he has been duly designated as Acting Corporation Counsel of the City of New

York, and as such he is an officer of the defendant, The City of New York. That the foregoing answer is true to his knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the defendant, The City of New York, is that it is a corporation; that the grounds of his belief as to all matters not therein stated upon his knowledge are as follows: Information obtained from the books and records of the Law Department and other departments of the City government, and from statements made to him by certain officers or agents of the defendant The City of New York.

LOUIS H. HAHLO.

Sworn to before me this 13th day of May, 1914.

DAVID F. DENNEHY,  
*Notary Public, Kings County.*

Certificate filed in New York County.

63 STATE OF NEW YORK,  
*County of New York, ss:*

Charles Strauss, Charles N. Chadwick and John F. Galvin, individually and as members of the Board of Water Supply of the City of New York, being duly severally sworn, each for himself deposes and says that he has read the foregoing answer and knows the contents thereof and that the same is true to his own knowledge except as to matters therein stated on information and belief and as to those matters he believes it to be true.

CHARLES STRAUSS.  
CHARLES N. CHADWICK.  
JOHN F. GALVIN.

Sworn to before me this 13th day of May, 1914.

DAVID F. DENNEHY,  
*Notary Public, Kings County.*

Certificate filed in New York County.

64

*Motion to Dismiss.*

District Court of the United States, Southern District of New York.

Equity. 11-127.

RAMAPO WATER COMPANY, Plaintiff,  
against

THE CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK, and John F. Galvin, Individually and as Members of the Board of Water Supply of the City of New York, Defendants.

**Motion.**

Now come the defendants, by their attorney and counsel, and move the Court that the bill of complaint be dismissed for want of jurisdiction because it appears on the face of said bill of complaint that all parties to the suit are citizens of the State of New York, and that the suit does not involve any question arising under the Constitution or laws of the United States.

FRANK L. POLK,  
*Corporation Counsel, Solicitor for the Defendants.*

Office and Post Office Address, Hall of Records, Borough of Manhattan, New York City.

Filed May 15, 1914.

65

*Notice of Motion.*

District Court of the United States, Southern District of New York.

Equity. 11-127.

RAMAPO WATER COMPANY, Plaintiff,  
against

THE CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK, and John F. Galvin, Individually and as Members of the Board of Water Supply of the City of New York, Defendants.

SIR: Please take notice that upon the bill of complaint filed in this case and the answer thereto, filed May 15th, 1914, the undersigned will move the United States District Court for the Southern District of New York, at a stated term thereof for motions to be held on the 22nd day of May, 1914, at 10.30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, in the Court House in the Post Office Building, in the Borough of Manhattan, City and County of New York, that the bill of complaint be dismissed for want of jurisdiction, because it appears on the face of said bill that all parties to the suit are citizens of the State of New York, and that the suit does

not involve any question arising under the Constitution or laws of the United States, and for such other and further relief as may be just and lawful in the premises.

FRANK L. POLK,  
*Corporation Counsel, Hall of Records, Borough of  
Manhattan, New York City.*

To Carroll G. Walter, 115 Broadway, Borough of Manhattan, New York City.

Filed May 15, 1914.

66

*Opinion of Judge Ward.*

United States District Court, Southern District of New York.

No. 113.

RAMAPO WATER COMPANY, Plaintiff,  
against

THE CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK, and John F. Galvin, Individually and as Members of the Board of Water Supply of the City of New York, Defendants.

Carroll G. Walter, for Plaintiff.

Frank L. Polk, Corporation Counsel, for Defendants.

Motion to Dismiss Bill for Want of Jurisdiction.

WARD, J.:

The bill alleges that the defendants, The City of New York and the Board of Water Supply of The City of New York, are impairing complainant's contract with the State of New York, in violation of Sec. 10 of Art. 1 and are taking its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and asks for appropriate relief.

In 1905 the State of New York recognized the necessity of establishing state control over the acquisition of land by municipal corporations or other civil divisions of the state for the purpose of obtaining a water supply and in Chap. 724 constituted an elaborate procedure for enabling the City of New York to do so.

67 The complainant was incorporated in 1887 under Chap. 40

Laws of 1848 known as the Manufacturing Act which was extended by Chap. 85 of the Laws of 1880 to include companies organized to accumulate, store, sell and furnish water. Such a company could only obtain land for the purposes of its franchise by purchase from the owners. Subsequently Chap. 472 Laws of 1881 empowered any such corporation formed for the purpose of supplying cities with water to acquire title to land in the manner specified in the Railroad Law, Chap. 140 Laws of 1850. That act provided elabo-

rate procedure for condemnation of private property. It also required the termini of the road to be stated and maps and profiles of the route to be filed in every county through which it was proposed to pass and notice to be given to the occupants of all lands over which the route is designated. Until these things were done the route was not located. The complainant contends that the act of 1881 incorporated these provisions as to the location of the route into the act of 1848. I do not think so. Such provisions were plainly inapplicable to the condemnation of large and irregular areas of land to be used as basins for the storage of water. All that the act intended was, I think, to give these water companies the right of eminent domain.

The legislature of New York had at the time in question full power to alter and repeal its statutes, Cons. of 1846 Art. 8 Sec. 1 and all charters, Rev. Stat. Sec. 8 Tit. 3 Chap. 18 and Sec. 19 of Chap. 140

68 Laws of 1848, under which the complainant was incorporated especially reserved to the legislature the right to alter or repeal the act.

June 7, 1890 the legislature repealed all the laws under which the complainant was incorporated. This left it an existing corporation with the rights previously conferred upon it by the repealed statutes. Before that date it had paid its organization tax and had spent money in surveying and had filed some maps and profiles of lands intended to be taken. As it remained a corporation none of these outlays could be said to have been taken if some other corporation had been authorized by the state to take the lands which the complainant had in mind to use. The filing of the maps, in my opinion, gave it no right in the lands they covered.

Chap. 985 of the Laws of 1895 Sec. 1 was passed for the specific benefit of the complainant. The first section gave it the authority to acquire lands and waters in the manner specified in the Railroad Act of 1850 along the watershed of the Ramapo and other water sheds. This simply left the company where it was before. Section Second went on to require it, before constructing its works or condemning land, to file maps of the route adopted and lands to be taken, in the way provided for in the Railroad Law. This act was repealed by Chap. 122 Laws of 1901. Between 1895 and 1901 the bill alleges that the complainant had filed about 125 maps and had purchased many options to buy land. The terms of these options are not stated nor whether they or any of them had been availed of or were outstanding when the defendants began operations under Chap. 724 Laws of 1905.

The complainant contends that under the decisions in Rochester etc. R. R. Co. v. New York, Lake Erie & Western R. R. Co., 110 N. Y. 128 and Suburban Rapid Transit Co. v. The Mayor, 128 N. Y. 510, the filing of maps and notice to the occupants of the lands over which the route goes gives a railroad company a vested interest in the land proposed to be taken as against any other corporation. It is argued that the same result should follow in the case of lands as to which the complainant filed maps under the act of 1895. If, however, we are to follow the analogy of the Railroad Act, we must follow it throughout, viz., that notice to the occupants is a condition of loca-

tion. There is no allegation in the bill that the complainant gave any notice to the occupants of the lands as to which it filed maps. It is only as to property in lands in which it has obtained an interest or easement by its proceedings that it can claim the protection of the constitutional provisions on which it relies. I have a right to examine the bill to see whether it shows that the complainant has any such rights as it alleges, *Underground Railroad v. City of New York*, 193 F. R. 416 and I think it has not.

If it were conceded to have some easement or interest in these lands, still the legislature would have a right to condemn them for public purposes, *Long Island Water Supply Co. v. Brooklyn*, 160 U. S. 685, subject, of course, to the duty of providing for compensation and due process of law, *People v. O'Brien*, 111 N. Y.

70 1. It seems to me that Sections 12 and 13 of Chap. 724 Laws of 1905 satisfy these requirements, *People v. Adirondack R. R. Co.* 160 N. Y. 225, 238, et seq.; *Backus v. Fourth Street Union Depot Co.*, 169 U. S. 557, 568 et seq. As the jurisdiction of the court depends entirely upon the constitutional ground the motion is granted.

June 16, 1914.

H. G. WARD,  
*United States Judge.*

Filed June 16, 1914.

71 [Endorsed:] United States District Court, Southern District of New York. Ramapo Water Co., plaintiff, against The City of New York, et al., defendants. Opinion.

72

*DecreeAppealed From.*

At a Stated Term of the United States District Court for the Southern District of New York, Held in and for said District, at the Court House, in the Post Office Building, in the Borough of Manhattan, City of New York, on the 26th Day of June, 1914.

Present: Hon. Henry G. Ward, United States Judge.

Equity 11-127.

RAMAPO WATER COMPANY, Plaintiff,  
against

THE CITY OF NEW YORK, CHARLES STRAUSS, CHARLES N. CHADWICK and John F. Galvin, Individually and as Members of the Board of Water Supply of the City of New York, Defendants.

The motion of the defendants to dismiss the bill of complaint in this case for want of jurisdiction came on to be heard at this Term, and was argued by Louis C. White, of counsel for the defendants, in favor of the motion, and by Carroll G. Walter, solicitor for the plaintiff, in opposition thereto, and thereupon upon consideration thereof, it is —

Ordered, adjudged and decreed that the motion of the defendants to dismiss the bill of complaint is sustained, and that said bill of complaint be and the same hereby is dismissed for want of jurisdiction, with costs to the defendants to be taxed.

Enter.

H. G. WARD,  
*United States Judge.*

Filed June 26, 1914.

73 *Petition for and Allowance of Appeal.*

District Court of the United States, Southern District of New York.

RAMAPO WATER COMPANY, Plaintiff,  
against

THE CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK, and John F. Galvin, Individually and as Members of the Board of Water Supply of said City of New York, Defendants.

The above named plaintiff, Ramapo Water Company, feeling itself aggrieved by the decree entered herein on the 26th day of June, 1914, dismissing the bill of complaint herein for want of jurisdiction, does hereby appeal from said decree to the Supreme Court of the United States and prays that its appeal may be allowed, and that a citation may be issued directed to the defendants above named and each of them, and that a duly authenticated transcript of the record and proceedings upon which said decree was made may be transmitted to said Supreme Court of the United States.

Dated New York, June 26th, 1914.

CARROLL G. WALTER,  
*Solicitor for Plaintiff.*

Office & P. O. Address: 115 Broadway, Borough of Manhattan, New York city.

Now, on this 26th day of June, 1914, it is ordered that the foregoing petition for appeal be and it hereby is allowed and that a citation be issued as prayed for, and that the Clerk certify the record and proceedings according to the prayer of said petition. Bond to be given in the sum of \$250.

H. G. WARD,  
*United States Judge.*

Filed June 26, 1914.

A bond was accordingly given and approved and filed on June 27, 1914.

74 [Endorsed:] Dist. Court of the United States, Southern District of New York. Ramapo Water Company, plaintiff, against City of New York, and Charles Strauss, Charles N. Chadwick and John F. Galvin, individually and as members of the Board of Water Supply of said City of New York, defendants. Petition for Appeal and Allowance of same. Carroll G. Walter, solicitor for plaintiff, 115 Broadway, Borough of Manhattan, New York City.

*Assignment of Errors.*

District Court of the United States, Southern District of New York.

RAMAPO WATER COMPANY, Plaintiff,  
against

CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK,  
and John F. Galvin, Individually and as Members of the Board  
of Water Supply of said City of New York, Defendants.

Now comes the plaintiff above named, Ramapo Water Company, by its solicitor, and presents with its accompanying petition for appeal from the decree entered herein on the 26th day of June, 1914, the following assignment of errors upon which it will rely upon its appeal from said decree, to wit:

1. The court erred in holding that it appears on the face of the bill of complaint herein that this suit does not involve any question arising under the Constitution or laws of the United States.

2. The court erred in granting the defendants' motion to dismiss the bill of complaint herein for want of jurisdiction.

3. The court erred in not holding that it appears upon the face of the bill of complaint herein that this is a suit arising under the Constitution of the United States.

4. The court erred in not denying the defendants' motion to dismiss the bill of complaint herein for want of jurisdiction.

76 5. The court erred in holding that Chapter 472 of the Laws of New York of 1881 did not incorporate into that law and into Chapter 40 of the New York Laws of 1848 and into Chapter 85 of the New York Laws of 1880, the provisions of Chapter 140 of the New York laws of 1850 as to the filing of maps.

6. The court erred in holding that under Chapter 140 of the New York Laws of 1850 no route was located until notice of filing was given to the occupants of the lands over which the route was designated.

7. The court erred in holding that the filing of maps by the plaintiff, as alleged in the bill of complaint, gave the plaintiff no right in, to, or against the lands covered by such maps.

8. The court erred in holding that the giving of notice to the occupants of the lands covered by and designated by the maps filed by the plaintiff, as alleged in the bill of complaint, was essential to a selection or location by the plaintiff of the lands covered by and designated on such maps.

9. The court erred in holding that Sections 12 and 13 of Chapter 724 of the New York Laws of 1905 satisfied the constitutional requirements providing just compensation and due process of law.

10. The court erred in refusing to hold that the bill of complaint having alleged the existence of a contract and its impairment and the possession of property and its deprivation without due process of law, a federal question was presented by the bill so as to give the court jurisdiction.

11. The court erred in refusing to hold that the bill shows on its face that the plaintiff acquired by grant from the State of 77 New York a vested right and franchise to utilize the water-sheds of the Esopus, Catskill, Schoharie and Rondout Creeks for the purpose of constructing and maintaining a waterworks system and a like franchise to supply water from those sources to the various municipalities of the State of New York.

12. The court erred in refusing to hold that the franchise so acquired by the plaintiff constitutes a contract and a right of property protected by the Constitution of the United States and was not subject to repeal and that the repealing acts set forth in the bill of complaint are therefore unconstitutional.

13. The court erred in refusing to hold that the act and proceedings of the defendants, done and carried on under color of authority of State laws, constitute an impairment of the plaintiff's contracts and a taking of its property without due process of law.

14. The court erred in not denying the motion to dismiss the bill of complaint for want of jurisdiction because the suit obviously does really and substantially involve a dispute or controversy as to a right which depends upon the construction of the Constitution of the United States.

15. The court erred in not denying the motion to dismiss the bill of complaint for want of jurisdiction because it appears from the bill of complaint that the plaintiff's claims as set forth therein are well founded in point of law and entitle it to relief.

Wherefore, and for divers other reasons upon which the said decree was entered, the said plaintiff prays that said decree may 78 be reversed and that the District Court of the United States for the Southern District of New York be directed by the mandate of the Supreme Court of the United States to enter a decree denying the defendants' motion to dismiss the bill of complaint for want of jurisdiction and adjudging that it appears upon the face of the bill of complaint herein that this suit arises under the Constitution of the United States; and for such other, further and general relief as to the court may seem proper.

Dated New York, June 26th, 1914.

CARROLL G. WALTER,  
*Solicitor for Plaintiff.*

Office & P. O. Address: 115 Broadway, Borough of Manhattan, New York City.

Filed June 26, 1914.

79 [Endorsed:] Dist. Court of the United States, Southern District of New York. Ramapo Water Company, Plaintiff, against City of New York, and Charles Strauss, Charles N. Chadwick and John F. Galvin, individually and as members of the Board of Water Supply of said City of New York, Defendants. Assignment of Errors. Carroll G. Walter, Solicitor for Plaintiff, 115 Broadway, Borough of Manhattan, New York City.

80

*Certificate of Question of Jurisdiction.*

District Court of the United States, Southern District of New York.

RAMAPO WATER COMPANY, Plaintiff,  
againstCITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK,  
and John F. Galvin, Individually and as Members of the Board  
of Water Supply of said City of New York, Defendants.

The District Court of the United States for the Southern District of New York hereby certifies to the Supreme Court of the United States that on the 26th day of June, 1914, a decree was enacted in the above entitled suit pursuant to the decision of said court granting a motion filed by the defendants to dismiss the bill of complaint herein upon the ground specified in said motion, viz., that it appears on the face of said bill of complaint that the defendants are citizens of the State of New York and that the suit does not involve any question arising under the Constitution or laws of the United States.

And this Court further certifies that in this suit the jurisdiction of this Court is in issue, and further certifies to the Supreme Court of the United States said question of jurisdiction raised by said motion to dismiss the bill of complaint on the ground aforesaid, namely: Does the bill of complaint in this suit set forth a cause of action arising under the Constitution of the United States so as to give this court jurisdiction of this suit notwithstanding the lack of diversity of citizenship.

Dated New York, June 26, 1914.

H. G. WARD,  
*United States Judge.*

Filed June 26, 1914.

81 [Endorsed:] Dist. Court of the United States, Southern District of New York. Ramapo Water Company, Plaintiff, against City of New York, and Charles Strauss, Charles N. Chadwick and John F. Galvin, individually and as members of the Board of Water Supply of said City of New York, Defendants. Certificate of Question of Jurisdiction. Carroll G. Walter, Solicitor for Plaintiff, 115 Broadway, Borough of Manhattan, New York City.

82

*Citation and Admission of Service.*

UNITED STATES OF AMERICA, ss:

To City of New York and Charles Strauss, Charles N. Chadwick, and John F. Galvin, Individually and as Members of the Board of Water Supply of said City of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on

the 24th day of July, 1914, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein Ramapo Water Company, a corporation, is appellant, and City of New York, and Charles Strauss, Charles N. Chadwick and John F. Galvin, individually and as members of the Board of Water Supply of said City of New York, are appellees, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and why speedy justice should not be done in that behalf.

Witness, the Hon. Edward Douglass White, Chief Justice of the United States, this 26th day of June, in the year of our Lord, One thousand nine hundred and fourteen.

H. G. WARD,  
*United States Judge.*

Service of the foregoing citation, together with a copy of the petition for and the allowance of the appeal therein referred to, the assignment of errors accompanying the same, and the bond on said appeal, is hereby admitted this 29th day of June, 1914.

FRANK L. POLK,  
*Solicitor for Defendants-Appellants,*  
Per W.

Filed July 1, 1914.

83 [Endorsed:] Dist. Court of the United States, Southern District of New York. Ramapo Water Company, plaintiff, against City of New York, and Charles Strauss, Charles N. Chadwick and John F. Galvin, individually and as members of the Board of Water Supply of said City of New York, defendants. Citation. Carroll G. Walter, solicitor for plaintiff, 115 Broadway, Borough of Manhattan, New York City.

84 United States District Court, Southern District of New York.

RAMAPO WATER COMPANY, Plaintiff,  
vs.

CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK, and John F. Galvin, Individually and as Members of the Board of Water Supply of said City of New York, Defendants.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated July 2, 1914.

CARROLL G. WALTER,  
*Attorney for Plaintiff.*  
FRANK L. POLK,  
*Attorney for Defendants.*  
W.

44 RAMPO WATER CO. VS. CITY OF NEW YORK ET AL., ETC.

85 UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

RAMAPO WATER COMPANY, Plaintiff,  
vs.

CITY OF NEW YORK and CHARLES STRAUSS, CHARLES N. CHADWICK,  
and John F. Galvin, Individually and as Members of the Board  
of Water Supply of said City of New York, Defendants.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the  
United States of America for the Southern District of New York, do  
hereby Certify that the foregoing is a correct transcript of the record  
of the said District Court in the above-entitled matter as agreed on  
by the parties.

In testimony whereof, I have caused the seal of the said Court to be  
hereunto affixed, at the City of New York, in the Southern District  
of New York, this 8th day of July in the year of our Lord one thou-  
sand nine hundred and fourteen and of the Independence of the said  
United States the one hundred and thirty-ninth.

[Seal District Court of the United States, Southern District of  
N. Y.]

ALEX. GILCHRIST, JR., Clerk.

Endorsed on cover: File No. 24,459. S. New York D. C. U. S.  
Term No. 715. Ramapo Water Company, appellant, vs. City of New  
York and Charles Strauss, Charles N. Chadwick, and John F. Galvin,  
individually and as members of the Board of Water Supply of the  
City of New York. Filed December 7th, 1914. File No. 24,459.

4  
Office Supreme Court, U. S.

FILED

JAN 13 1915

JAMES D. MANNER  
CLERK

Supreme Court of the United States  
OCTOBER TERM, 1914

No. 715

RAMPO WATER COMPANY

*Appellant*

against

CITY OF NEW YORK and CHARLES STRAUSS, CHARLES  
N. CHADWICK and JOHN F. GALVIN, individually, and as  
members of the Board of Water Supply of said City of New York

*Appellees*

MOTION TO ADVANCE

CARROLL G. WALTER

*Counsel for Appellant*

115 Broadway

New York City

THE ARTHUR H. CRIST CO., Cooperstown, N. Y.  
New York Office, 220 Broadway



# Supreme Court of the United States

No. 715, October Term 1914

RAMAPO WATER COMPANY,  
Appellant,  
against  
CITY OF NEW YORK and CHARLES  
STRAUSS, CHARLES N. CHAD-  
WICK and JOHN F. GALVIN,  
individually and as members  
of the Board of Water Sup-  
ply of said City of New  
York,  
Appellees.

## **Motion to Advance**

Now comes the appellant above named and moves the Court to advance this cause and set the same down for forty-five minute argument as provided in Rule 32 and subdivision 3 of Rule 22, or, in the alternative, if that relief cannot be had, then that the cause be transferred to the summary document for hearing as provided in Rule 32 and subdivision 6 of Rule 6. The following is a brief statement of the facts and matter involved and of the reasons for the application:

This cause comes to this Court on appeal from the District Court of the United States for the

Southern District of New York, and the only question in issue is the question of the jurisdiction of the Court below.

The suit was brought in March, 1914, to enjoin the appellees from taking the appellant's property for a public use without compensation in violation of the due process clause of the Fourteenth Amendment to the United States Constitution, the bill alleging, also, that the acts complained of are being done under color of authority of State laws and amount to an impairment of the obligations of the appellant's contracts with the State of New York (*i. e.* grants of franchises to the appellant) in violation of Section 10 of Article I of the United States Constitution. All the parties are citizens of New York and, as expressly stated in the bill, the suit arises under the Constitution of the United States and the jurisdiction of the District Court was invoked upon that ground for the purpose of protecting and enforcing the appellant's rights under said Constitution.

The appellees appeared generally and moved to dismiss the bill for want of jurisdiction upon the ground that it appears upon the face of the bill that "the suit does not involve any question arising under the Constitution or laws of the United States." The District Court granted this motion and in June 1914 entered a final decree dismissing the bill "for want of jurisdiction." In connection with the allowance of this appeal from that decree, the District Court has certified that its jurisdiction is in issue and has certified the jurisdictional question as follows:

*Does the bill of complaint in this suit set forth a cause of action arising under the Constitution of the United States so as to give this (the District) Court jurisdiction of this suit notwithstanding the lack of diversity of citizenship?*

The substance of the ruling of the District Court is set forth in the following quotation from the opinion delivered upon granting the motion to dismiss:

**"I have a right to examine the bill to see whether it shows that the complainant has any such rights as it alleges, *Underground Railroad v. City of New York*, 193 U. S., 416, and I think it has not."**

In other words, the District Court, acting upon the authority of the case cited, examined the bill substantially as upon a demurrer for want of equity, and having reached the conclusion that the facts alleged did not show the possession of a contract or property right, it held that there was therefore no question in the case arising under the Constitution and that the Court was consequently *without jurisdiction*.

Upon this appeal the appellant contends that the District Court erred in two respects:

**FIRST:** The question whether upon the facts alleged the appellant has a contract or property right within the meaning of the United States Constitution is itself a Federal question which gives the District Court jurisdiction.

**SECOND:** As a matter of law the bill shows on its face that the appellant actually has the rights and franchises—the contract and property—it claims to have, and that those rights and franchises are being impaired and taken in violation of the contract and due process clauses of the United States Constitution.

In support of the first proposition above the appellant maintains that the case of *Underground Railroad v. City of New York*, 193 U. S. 416, is contrary to principles frequently announced by this Court in other cases, both before and since that decision, and that said case had been, in ef-

feet, overruled by numerous subsequent cases including

*Vicksburg Waterworks Co. v. Vicksburg*, 185 U. S., 65, reaffirmed 202, U. S., 453.

*Knoxville Water Co. v. Knoxville*, 200 U. S., 22.

*Merchantile Trust Co. v. City of Columbus*, 203 U. S., 311.

*Siler v. Louisville & Nashville R. R. Co.*, 213 U. S., 175.

*The Fair v. Kolder Die Co.*, 228 U. S., 22.

It is contended that these later cases, and others which might be cited, establish the doctrine that whether or not there is a contract or a property right within the meaning of the Constitution is a question within the jurisdiction of the Federal Courts and that when such a contract or property right is asserted there is jurisdiction whether such claim ultimately be held good or bad. If this contention be correct, the District Court clearly had jurisdiction and a reversal of the decree appealed from must necessarily follow.

If, on the other hand, the contention be not correct: if the jurisdiction of the District Court depends, not upon the assertion or claim of a right under the Constitution, but upon the actual possession of a legally valid contract or property right, then the jurisdictional question certified to this Court involves and depends upon the underlying, fundamental and controlling question of whether or not upon the facts alleged in the bill, assuming them to be true, the appellant has a valid contract or a valid property right, and upon this appeal this Court must consider and determine that question *as a question of jurisdiction*.

It being apparent from the foregoing statement that the case here involves solely the jurisdiction

of the Court below, we ask that the case be advanced and set down for argument as requested above. If it be not improper to do so, we would respectfully suggest that the cause be set for argument about the latter part of February or early part of March, 1915.

Respectfully submitted,  
CARROLL G. WALTER,  
Counsel for Appellant.

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**Notice of Motion to Advance**

Sir:

PLEASE TAKE NOTICE that the appellant, Ramapo Water Company, will submit the foregoing motion to advance to the Supreme Court of the United States at a stated term thereof on Monday, January 18th, 1915, at the Capitol in the City of Washington D. C., at the opening of the Court on that day, or as soon thereafter as counsel can be heard.

Yours, etc.,  
CARROLL G. WALTER,  
Counsel for Appellant,  
115 Broadway,  
New York, N. Y.

To:

Louis G. White, Esq.,  
Counsel for Appellees,  
Corporation Counsel's Office,  
Municipal Building, New York, N. Y.